

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

REGINA NORMAN,

Petitioner,

v.

**CIVIL ACTION NO. 3:12-CV-117
(JUDGE GROH)**

TERRY O'BRIEN,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION ON
PETITIONER'S § 2241 PETITION**

On this day, the above-styled matter came before the Court for consideration of the Preliminary Report and Recommendation and Report and Recommendation of United States Magistrate Judge James E. Seibert. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation. Magistrate Judge Seibert filed his preliminary report and recommendation on October 31, 2012 [Doc. 17]. In that filing, the magistrate judge recommended that this Court dismiss without prejudice the Petitioner's claims regarding the conditions of her confinement, found in ground one, two, three, and five of the petition as not properly raised pursuant to 28 U.S.C. § 2241.

The magistrate judge also ordered Respondent to show cause why the writ should not be granted as to ground four of the petition. Respondent filed his Motion to Dismiss or, in the alternative, for Summary Judgment and Response to Order to Show

Cause on November 8, 2012 [Doc. 18]. Petitioner replied on November 13, 2012 [Doc. 20]. On November 14, 2012, the magistrate judge entered a report and recommendation granting Respondent's Motion to Dismiss or for Summary Judgment [Doc. 18] and dismissing Petitioner's only remaining claim, ground four in her § 2241 petition [Doc. 1]. Neither party filed objections to the report and recommendation.

Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court is required to review *de novo* those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140, 150, 106 S. Ct. 466, 472 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal the Court's Order. **28 U.S.C. § 636(b)(1); *Snyder v. Ridenour***, 889 F.2d 1363, 1366 (4th Cir. 1989); ***United States v. Schronce***, 727 F.2d 91, 94 (4th Cir. 1984). Objections to Magistrate Judge Seibert's report and recommendation were due within fourteen (14) days of service, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b). Petitioner, by counsel, and Respondent, by counsel, accepted service of the preliminary report and recommendation on October 31, 2012 [Doc. 17]. Neither party filed objections. Petitioner, by counsel, and Respondent, by counsel, accepted service of the report and recommendation on November 14, 2012 [Doc. 21]. Neither party filed objections. Accordingly, this Court will review the report and recommendation for clear error.

Upon careful review of the report and recommendation, the Court **FINDS** that the

magistrate judge's **Preliminary Report and Recommendation [Doc. 17]** and **Report and Recommendation [Doc. 21]** should be, and is, hereby **ADOPTED** for the reasons more fully stated in the magistrate judge's reports. Accordingly, the Court **DENIES** counts one, two, three, and five under 28 U.S.C. § 2241 **[Doc. 1]**, and **DISMISSES** those claims **WITHOUT PREJUDICE**. The Court **GRANTS** the Respondent's Motion to Dismiss or for Summary Judgment **[Doc. 18]**, and Petitioner's only remaining claim, ground four in her § 2241 petition **[Doc. 1]** is **DISMISSED WITH PREJUDICE**. The entirety of this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is directed to enter judgment for the Respondent.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 cases, this Court declines to issue a certificate of appealability as the petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336-38, 123 S. Ct. 1029, 1039-40 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong (citing *Slack v. McDaniel*, 529 U.S. 473, 482-84, 120 S. Ct. 1595 (2000))).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record.

DATED: December 4, 2012.


GINA M. GROH
UNITED STATES DISTRICT JUDGE